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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,756	11/12/2003	Marc Nicolaas De Mul	J6864(C)	7538

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EXAMINER

MERCIER, MELISSA S

ART UNIT	PAPER NUMBER
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1615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/706,756	Applicant(s) DE MUL ET AL.	
	Examiner Melissa S. Mercier	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1-9-07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of Applicants Remarks and Amended Claims filed on January 9, 2007 are acknowledged. Claims 1-19 are pending in this application. Claims 9-19 have been previously withdrawn from consideration. Claims 1-8 are being prosecuted in this action.

Withdrawn Rejections

Claim Rejections - 35 USC § 112

The rejection of Claim 8 under 35 USC § 112, second paragraph has been withdrawn.

Claim Rejections - 35 USC § 102

The rejections of Claims 1-8 under 35 USC § 102(b) as being anticipated by Vatter et al (US 2002/0028223) have been withdrawn by the examiner in view of the amended claims.

The rejections of Claims 1-6 and 8 under 35 USC § 102(b) as being anticipated by Sakuta (US 6,747,115) have been withdrawn by the examiner in view of the amended claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakuta et al. (US Patent 6,747,115) in view of Vatter et al. (US 2002/0028223).

Sakuta teaches "a silicone polymer that is insoluble in organic solvents due to its three dimensional cross linked structure which swells up relative to fluorosilicate oils. The silicone polymer is a cross linked product of a SiH containing flourosilicone and an unsaturated polyoxyalkylene. The Sakuta teachings relate to a paste-like composition formed by making the silicone compounds swell up in silicone oil and a cosmetic material" (abstract).

Sakuta's example 7 comprises:

"20% of a cross linked polysiloxane elastomer prepared according to example 3 (column 18, lines 45-54);

1% titanium oxide coated mica (a light scattering particle);

and water (a cosmetically acceptable carrier). (column 20, lines 50-66, column 21, lines 1-13).

Regarding Claim 2, Sakuta teaches "examples of silicone oils include dimethylpolysiloxane and dimethylsiloxane-methylphenylsiloxane copolymer" (column 9, lines 45-50).

Regarding Claims 3-4, Sakuta teaches, "pigments including talc, mica, titanium oxide coated mica, titanium oxide coated talcs" (column 11, lines 4-50).

Regarding Claim 5, example 14, a cream, comprises 10% of a cross-linked polysiloxane elastomer, as prepared according to Example 6. (column 23, lines 59-67).

Regarding Claim 8, example 7 further comprises the thickeners: palmitic acid in the amount of 0.2% and dimethyloctyl p-aminobenzoic acid in the amount of 0.5% (column 20, lines 50-67).

Sakuta does not disclose the particle size of the light scattering particles.

Vatter teaches the pigment portion of the composition comprises "a solid that reflects light of certain wavelengths while absorbing light of other wavelengths. Useful pigments include talc, mica, magnesium carbonate, calcium carbonate, magnesium silicate, aluminum magnesium silicate, silica, titanium dioxide, zinc oxide, red iron oxide, yellow iron oxide, black iron oxide, ultramarine, polyethylene powder, methacrylate

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powder, polystyrene powder, silk powder, crystalline cellulose, tianate mica”
(paragraphs 101-103).

Regarding Claim 7, Vatter teaches “preferred pigments having a primary average particle size from about 5nm to about 100,000nm” (paragraph 0105).

In the absence of any showing to the contrary, the viscosity, opacity, gloss and normal force are inherent properties as the combined references teach the same composition as claimed in the instant application.

It would have been obvious to a person of ordinary skill in the art at the time the inventions was made to have used the particles taught by Vatter in the cosmetic composition taught by Sakuta in order to make a composition which can reflect light of certain wavelengths, without providing appreciable luminescence and impart opacity and color.

A person of ordinary skill in the art would have had a reasonable expectation of success since both references teach cosmetic compositions. Sakuta further discloses that in the field of cosmetics, not only water by also oil must be blended with the composition as an essential component.

Response to Arguments

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowable. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

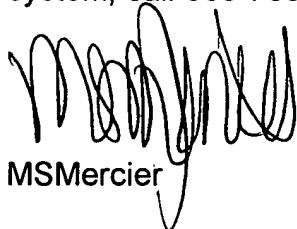
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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